IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13440 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAX NEW YORK LIFE INSURANCE COLTD. - Petitioner(s)
Versus
NITA A. MALKIYA - Respondent(s)

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Appearance :
MS AMRITA M THAKORE for Petitioner(s) : 1,
MR MA BHATT for Respondent(s) : 1,
MR ANIL N MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/08/2007

ORAL JUDGMENT

Rule. Mr. MA Bhatt, learned advocate waives service of rule on behalf of respondent. At the request of the learned advocates for the parties, the

matter is taken up for final hearing today.

2. The Insurance Company is the petitioner, which has made a grievance that though several disputed questions are present in the proceedings and the claim of the respondent has been refuted keeping in view these disputed questions, the Ombudsman, while exercising powers under The Redressal of Public Grievances Rules, 1998 [hereinafter referred to as 'the Rules'] has granted the claim of the respondent of life insurance.

3. I have perused the record of the petition. I have also heard Miss Amrita M Thakore, learned advocate for the petitioner and Mr. MA Bhatt, learned advocate for respondent. It is submitted by Miss Thakore that under the Rules Ombudsman has no power to adjudicate upon the disputed facts. He has no power to permit the parties to adduce evidence, documentary as well as oral and give appropriate decision on the basis of the such evidence. It is her submission that while submitting the proposal form, deceased insured had deliberately suppressed certain material facts as well as he had stated some untrue facts. In view of the same, the claim was required to be rejected.

3.1. As against that, Mr. Bhatt has tried to support the decision of Ombudsman.

4. On perusal of the aforesaid Rules, it appears that Ombudsman has no power to hold any detailed inquiry and permit the parties to lead evidence on the disputed questions of fact. He has no power to adjudicate upon such controversies. The aforesaid facts clearly show that there are several disputed

questions of fact that have been raised by the petitioner which may require leading of evidence by it to support its case. Mr. Bhatt also does not controvert this position. He, therefore, submits that the respondent be permitted to move the appropriate forum for recovery of the insurance amount. It is his submission that the Consumers Disputes Redressal Forum will be the appropriate Forum to decide these questions. Be that as it may, the fact remains that the order of the Ombudsman is without any authority of law. Hence, it is required to be quashed and it is hereby quashed and set aside. It is, however, clarified that whenever the proceedings are filed by the respondent before the appropriate authority, it will be open for the petitioner – Insurance Company to raise all contentions including that of maintainability of the proceedings before that Forum. It is also clarified that the assurance given by respondent to the Ombudsman regarding the limit of the claim accepted by her, will not survive any more and it will be open for her to claim higher amount than the claim admitted by her.

With the aforesaid, petition is allowed. Rule made absolute. No order as to costs.

[Akshay H Mehta, J.]

* Pansala.